

## REMARKS

This is a response to the non-final Office Action mailed on October 6, 2011. No fees are due herewith this response. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-00505 on the account statement.

Claims 1-11, 13-14, 16-20 and 22 are rejected in the application. Claims 12 and 15 were previously canceled without disclaimer. In the Office Action, Claims 8-10, 13 and 16 are rejected under 35 U.S.C. §112; and Claims 1-11, 13-14, 16-20 and 22 are rejected under 35 U.S.C. §103. In response, Claims 1, 13, 16-18 and 20 have been amended and Claims 21-22 have been canceled. The amendments do not add new matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 8-10, 13 and 16 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. With respect to Claims 8-10, Applicants respectfully submit that Claim 1 does not recite that the strips are between the layer of aluminum foil and the layer of propylene. As a result, the rejections of Claim 8-10 under 35 U.S.C. §112, second paragraph, are moot. Claims 13 and 16 have been amended to address the informalities cited by the Patent Office. Based on at least these noted reasons, Applicants believe that Claims 8-10, 13 and 16 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejections of Claims 8-10, 13 and 16 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-11, 13-14, 16-20 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 26 09 520 to Kimura ("Kimura"), U.S. Patent No. 4,598,826 to Shinbach ("Shinbach") and FR 2832698 to Jammet et al. ("Jammet"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Independent Claims 1, 17-18 and 20 have been amended to recite, in part, a flexible container having walls comprising a 3-layer laminate of polyethylene/aluminum/polypropylene. Independent Claims 1, 17-18 and 20 also recite, in part, that the tear limiting strips comprise a material selected from the group consisting of polyester, polyethylene, polypropylene and

combinations thereof and have a thickness from about 20 to about 50 microns. The opposed back and front walls each have a respective top edge. The walls are sealed together proximate to the respective top edges defining an internal space between them. The pair of tear-limiting strips defines a tear path that extends from an end of a wall to the top edge.

The containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. First, having walls made from a 3-layer laminate of polyethylene/aluminum/polypropylene allows the container to be useful for retorted conditions. Factors such as strip thickness, strip width and grade of strip tape material will also determine the strip tear resistance in comparison with the tear resistance of the film from which the container is fashioned. In the present claims, the tear limiting strips comprise a tape selected from the group consisting of polyester, polyethylene, polypropylene and combinations thereof and have a thickness from about 20 to about 50 microns, which provide unique properties to the tear limiting strip.

In addition, by setting limits to the area available for tearing and defining such area entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is reduced. See specification, page 5, lines 7-13.

*Kimura, Shinbach* and *Jammet* alone or in combination fail to disclose or suggest each and every element of independent Claims 1, 17-18 and 20. Specifically, *Kimura, Shinbach* and *Jammet* alone or in combination fail to disclose or suggest a flexible container having walls comprising a 3-layer laminate of polyethylene/aluminum/polypropylene in combination with at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns and include a material selected from the group consisting of polyester, polyethylene, polypropylene and combinations thereof as required by independent Claims 1, 17-18 and 20.

*Kimura* discloses packages having a package body, a sticker attached to the package body and defining a tear line for opening an end of the package. See *Kimura*, English Abstract. *Shinbach* discloses a heat-sealable laminated package for hermetically sealing an object in a

pouch of the package. See *Shinbach*, Abstract. However, *Kimura* and *Shinbach* fail to disclose or suggest the presently claimed container materials or tear paths according to the present claims.

*Jammet* discloses a container having two lateral walls, a bottom and a filling orifice capable of being closed after the container has been filled with a product. The container is formed from a tearable band material and includes at least one stiffening element 50. See, *Jammet*, Claim 1; Figures 1-8. Nevertheless, *Jammet* fails to teach or suggest the specific structure of the pair of tear-limiting strips according to the present claims.

What the Patent Office has done is to rely on hindsight reconstruction of the claimed invention. Applicants respectfully submit that it is only with a hindsight reconstruction of Applicants' claimed invention that the Patent Office is able to even attempt to piece together the teachings of the prior art so that the claimed invention is allegedly rendered obvious. Instead, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

For at least the reasons discussed above, the cited references fail to disclose or suggest each and every element of independent Claims 1, 17-18 and 20. Moreover, the cited references fail to even recognize the advantages, unexpected benefits and/or properties of a flexible container having tear strips in accordance with the present claims. As a result, Applicants respectfully submit that independent Claims 1, 17-18 and 20, along with any claims that depend from independent Claims 1, 17-18 and 20, are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicants respectfully request that the obviousness rejection under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic

interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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Dated: December 8, 2011